

VZCZCXRO8213  
PP RUEHIK  
DE RUEHPS #0447/01 2860739  
ZNR UUUUU ZZH  
P 130739Z OCT 09  
FM AMEMBASSY PRISTINA  
TO RUEHC/SECSTATE WASHDC PRIORITY 9343  
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE  
RUEHNO/USMISSION USNATO 1219  
RUFOADA/JAC MOLESWORTH RAF MOLESWORTH UK  
RUCNDT/USMISSION USUN NEW YORK 1743  
RHFMIUU/AFSOUTH NAPLES IT  
RHMFISS/CDR TF FALCON  
RHEFDIA/DIA WASHDC  
RUEKJCS/SECDEF WASHINGTON DC  
RUEPGEA/CDR650THMIGP SHAPE BE  
RHEHNSC/NSC WASHDC  
RUEAWJA/DEPT OF JUSTICE WASHDC  
RHMFIUU/DEPT OF HOMELAND SECURITY WASHDC  
RUEHC/DEPT OF LABOR WASHDC  
RUEATRS/DEPT OF TREASURY WASHDC  
RUZEJAA/USNIC PRISTINA SR

UNCLAS SECTION 01 OF 04 PRISTINA 000447

SIPDIS  
SENSITIVE

DEPT FOR EUR/SCE, EUR/PGI, INL, DRL, PRM, USAID

E.O. 12958: N/A

TAGS: [ECON](#) [ETRD](#) [PGOV](#) [KV](#) [SR](#)

SUBJECT: KOSOVO: EU(LEX)-SERBIA CUSTOMS AGREEMENT PRESENTS POTENTIAL  
FOR ANOTHER EU-GOK POLITICAL IMBROGLIO

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SENSITIVE BUT UNCLASSIFIED - PLEASE PROTECT ACCORDINGLY

REFTEL: Pristina 362

11. (SBU) SUMMARY: European representatives, both in Brussels and in Kosovo, are developing a framework to negotiate a customs protocol between EULEX -- on behalf of the GOK -- and Serbia, which would include both data sharing on customs activity and the restart of revenue collection at Gates 1 and 31 in the majority-Serb north. The current European plan, though far from final, shows significant evolution from its starting point, thanks largely to our input. The plan would place all funds collected at the northern gates in a special bank account for exclusive use in the municipalities of Leposavic, Zvecan and Zubin Potok. Though the EU believes this approach should be acceptable to the GOK and would avoid "fiscal partition" of the country, Kosovo officials have told us that they find such plans for distribution of funds unacceptable. While we and Kosovo officials are eager to see EULEX assume full customs control at Gates 1 and 31, we are concerned about what we perceive as an EU rush to negotiations with Belgrade despite some slowing of the EU's pace since our interventions. With local elections in Kosovo in November, and oral arguments on Kosovo's declaration of independence at the International Court of Justice (ICJ) in December, Kosovo status politics, from both Pristina and Belgrade, will likely preclude any serious negotiations in the near term. The Ambassador has urged Brussels-based and local EU officials to reexamine assumptions about what the GoK could accept with regard to distribution of revenues from Gates 1 and 31 and to delay presenting any formal proposals to either Pristina or Belgrade until at least after the December oral arguments at the ICJ. Otherwise, the EU risks another acrimonious and destructive debate with the GOK over its presence and work here. END SUMMARY.

EUROPEAN PLANS FOR A CUSTOMS TECHNICAL AGREEMENT  
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12. (SBU) EU representatives, both in Brussels and in Pristina, are developing a framework to negotiate a technical agreement on customs cooperation between EULEX -- on behalf of the GOK -- and Serbia. This would be the second such technical agreement between EULEX and

Belgrade. The first, the recently agreed arrangement on police cooperation, was the subject of acrimonious exchanges between EU representatives and official Pristina in September (Reftel), and only intervention by the U.S. with both sides prevented the debate from spiraling into a more serious political crisis. Current thinking among our EU interlocutors is that the negotiations with Belgrade over a customs agreement should address both technical (i.e., the exchange of customs data between EULEX and Belgrade) and operational issues (i.e., the resumption of revenue collection at Gates 1 and 31 in northern Kosovo, including the disposition of those funds).

13. (SBU) In our earlier conversations with EULEX, we had been told that the EU planned to negotiate the technical and operational issues separately. We had warned our EU interlocutors that this would have been a serious tactical misstep -- a message the Ambassador repeated to EU officials in Brussels on October 1. Brussels-based officials told the Ambassador that they had dropped the idea of a "two-phased" approach to addressing outstanding customs issues. On October 2, EU Special Representative Pieter Feith told local Quint representatives the same thing, stressing that the EU "wanted to be in lock-step" with the U.S. as it moved forward with negotiations over the customs arrangement. Feith also informed the Quint that Brussels had asked his office (as opposed to EULEX) to lead the negotiations with Belgrade -- another welcome development from our perspective given EULEX's mismanagement of the police technical arrangement.

14. (SBU) On October 4, the Ambassador and visiting Deputy Assistant Secretary Stuart Jones reiterated to Feith U.S. concerns over both the timing and the mechanics of the EU proposal. Based on our critique of the plan during this meeting, Feith agreed that a more deliberate pace may be best. He also noted that the mechanics are

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still under discussion, "alternate mechanisms and vehicles" could be discussed, and that U.S. input would be seriously considered. Feith has also developed a set of principles for the negotiations, which are drawn from a more detailed concept paper about the issue, and which he plans to share with Pristina and Belgrade soon.

GATES 1 AND 31 THE REAL ISSUE  
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15. (SBU) It is possible that the issue of exchange of customs data between EULEX and Belgrade could become politicized, but we do not anticipate that either Pristina or Belgrade will object. EULEX already exchanges customs data with both Serbian Customs and Kosovo Customs. A technical arrangement would merely formalize this exchange, and we understand, make the data exchanged admissible in court. The more important, and more contentious, issues to be resolved in any talks on a EULEX-Belgrade customs agreement center on the resumption of revenue collection at Gates 1 and 31, which is the major outstanding issue preventing EULEX from carrying out full customs control in the north, something we and the GOK have been seeking and urging for months.

A UNIFIED, KOSOVO-WIDE CUSTOMS CODE  
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16. (SBU) The resumption of revenue collection at Gates 1 and 31 involves three important questions: 1) who collects the money and under what customs code; 2) where the money is deposited and kept; and, 3) how it is distributed. The EU proposes that EULEX collect the revenue under the Kosovo Customs and Excise Code rather than under the previous UNMIK customs regime, an approach that EULEX believes is consistent with its mandate and would avoid a politically problematic situation where the Kosovo code is applied at border control points (BCP) in the south and UNMIK rules are applied in the north. In addition, Articles 310 and 311 of the Kosovo code stipulate that Kosovo Customs may delegate authority to a third party, provided the GOK and the third party agree on details of the arrangement. (Note: European admission that a delegation of authority is necessary makes official Pristina central to any agreement on customs, a qualitative difference from EULEX's approach on the police cooperation agreement. End Note) All sides are likely

to agree to EULEX agents collecting revenues, and the EU believes, to do so under Kosovo law, but where customs revenues are deposited and their distribution will be more contentious.

#### DEPOSIT AND DISTRIBUTION OF REVENUES

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17. (SBU) According to the current EU plan, revenue collected would be deposited in a bank account opened and controlled by a separate actor (as yet unnamed but possibly a non-EULEX EU actor), and separate from the Kosovo Consolidated Budget account. These funds would automatically transfer to an account at the Central Bank of Kosovo (CBK), then would immediately be returned to the separate account and used exclusively for the northern municipalities. This fulfills requirements to verify accuracy of revenue collections by matching funds against paperwork, but would require Pristina to accept the northern municipalities as the properly constituted and elected recipients of the funds collected at Gates 1 and 31. The EU argues that this avoids a "fiscal partition" of Kosovo because even though the funds would not flow into the Kosovo Consolidated Budget and would be earmarked for use in the north, they would pass through the hands of official Pristina (via the CBK). EU staff also stress that Pristina would be able to reduce spending in the north by an amount equal to revenue collected from Gates 1 and 31. This arrangement would hold for one year and then be up for review and possible renewal.

#### MINISTER OPPOSES SEPARATE ACCOUNT

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18. (SBU) In meetings on September 30 and October 9, Minister of Economy and Finance Ahmet Shala already signaled to us the GOK's

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concerns about possible mechanisms for the restart of revenue collection at Gates 1 and 31. Shala was clearly uncomfortable with the concept of earmarking funds for use only in Leposavic, Zubin Potok, and Zvecan, which had been floated in the past. He added that if a reasonable estimate could be made of annual revenue collected at the gates, equivalent funds could be allocated from the Kosovo Consolidated Budget for the three northern municipalities, though this would be a fraction of the money these municipalities currently receive from Kosovo. Shala saved his strongest words for the separate bank account. He said that under no circumstances would such an arrangement be acceptable to the GOK. Expressing some of the alienation Kosovo officials feel from EU structures, he noted that EULEX negotiates with Belgrade but not with Pristina, adding that he would like Kosovo to work more closely with the EU rather than "just being acted upon." On October 1, the Ambassador outlined, in general terms, to Brussels-based officials the possibility that the GOK may object to the EU's deposit and distribution proposals.

#### POORLY CONCEIVED EU TIMELINE

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19. (SBU) The Europeans' proposed roadmap for the reestablishment of full customs controls notes that they will be operational as of March 31, 2010. At the October 2 Quint, Feith suggested the EU planed to present a concept paper to Pristina and Belgrade within the next two weeks that included delineation of tasks and concurrence on revenue accounts and distribution. In just days Kosovo will formally enter a municipal election campaign season. GOK officials with whom we have spoken fear that leaks to the media on a "customs protocol," especially any plans to earmark funds for the north, will inflame election rhetoric and, given the outcry over the recent EULEX-Serbia police cooperation agreement, will further alienate the Kosovo public from the international community. In addition, both Belgrade and Pristina are preparing for December oral arguments at the International Court of Justice on the legality of Kosovo's declaration of independence. As each side completes and presents its arguments, neither is likely to agree to compromise provisions that could be interpreted as the exercise of sovereignty by the other in the northern municipalities.

COMMENT

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¶10. (SBU) The reestablishment of full customs controls at Gates 1 and 31 is a goal that the USG, the Europeans and the GOK share. Since one reason we share this goal is our common desire to sideline parallel structures, the method that we employ to reestablish customs controls should avoid cementing in place the peculiarity of "The North." This informs our belief that the way forward should fold Gates 1 and 31 into a larger discussion plans for full integration of the northern municipalities -- a principle the Europeans now appear to accept. We are sympathetic to claims from the GOK that separate bank accounts and exclusive earmarks could do the opposite. Maintenance of Kosovo as a single customs area and treatment of both Pristina and Belgrade as stakeholders with whom to negotiate are important principles present in the European plan. EUSR Feith's desire to achieve U.S. buy-in for the plan leaves us with the hope that our interventions can ensure that these principles are embodied in the eventual agreement.

¶11. (SBU) When the European plan moves from principles to tactics and timelines, however, its flaws become apparent. The path to full customs control is fraught with peril, leaving the EU caught between the Scylla and Charybdis of Pristina and Belgrade. Moreover, EULEX does not have the best of track records when it comes to timely recruitment and deployment. There is no reason to think that they will do better this time when the stakes are arguably the highest yet. Feith is still looking to present the basics of a plan to Pristina and Belgrade next week, a move we feel plays directly into Belgrade's hands. While EU staff admit privately that they have little leverage with Belgrade, a hasty rollout risks losing even that.

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¶12. (SBU) The Ambassador will discuss this again with EUSR Feith on October 12, and with the Quint on October 13. In both venues we will continue to urge a more deliberate process. Our European counterparts know they must work with us and seriously consider the concerns we share with Pristina. This useful lesson from the police protocol seems to have sunk in. A deliberate approach is preferred over taking up these contentious issues when Pristina is embroiled in an election campaign and both Belgrade and Pristina are preparing for ICJ oral arguments. Negotiation of a technical arrangement on customs can and should wait until mid-December at the earliest.

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